

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**STATE AUTO PROPERTY AND
CASUALTY INSURANCE COMPANY,
an Ohio Corporation,**

Plaintiff,

v.

Civil Action No. 3:18-cv-00343

**SCOTT WHEELER, a West Virginia Citizen
and agent of SCOTT WHEELER
DEVELOPMENT, LLC; SCOTT
WHEELER DEVELOPMENT, LLC, a
West Virginia Limited Liability Company;
and RAJ KHANNA and SHALINNI KHANNA,
husband and wife and West Virginia Citizens,**

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

Comes now State Auto Property and Casualty Insurance Company (“State Auto”), by and through its counsel, Robert A. Lockhart, Elizabeth A. Moore, and Cipriani & Werner, P.C., and, for its Complaint for Declaratory Judgment, states as follows:

1. This action is brought pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure to declare the rights of the Plaintiff against the Defendants.
2. State Auto is a corporation organized and existing pursuant to the laws of the state of Ohio, with its principal place of business in Ohio, and is licensed to transact the business of insurance in the State of West Virginia.
3. Defendant Scott Wheeler Development, LLC (“SWD”) is a limited liability company with its principal place of business in Milton, Cabell County, West Virginia.

4. Upon information and belief, Defendant Scott Wheeler (“Mr. Wheeler”) is a resident of Milton, Cabell County, West Virginia and the authorized agent of SWD.

5. Upon information and belief, Defendants Raj Khanna and Shalinni Khanna (“Dr. and Mrs. Khanna,” respectively) are husband and wife and are residents of Barboursville, Cabell County, West Virginia.

6. This Court has jurisdiction of this matter pursuant to 28 U.S.C. 1332(a) in that complete diversity of citizenship exists and, considering the compensatory damages and statutory attorney fees and costs sought by Dr. and Mrs. Khanna, along with defense costs provided to SWD, the amount in controversy exceeds \$75,000.

7. Venue is proper with this Court.

8. State Auto insured SWD under a commercial insurance policy, number BOP 2653301 (“the Policy”), which was in effect from February 15, 2014 through February 15, 2015.

9. The Policy provided up to \$1,000,000 of liability coverage. See Exhibit A.

10. On October 23, 2014, Dr. and Mrs. Khanna filed civil action number 14-C-782 in the Circuit Court of Cabell County, West Virginia, naming Scott Wheeler and Scott Wheeler Development, LLC as defendants. See Exhibit B.

11. The claims asserted against SWD allege that Dr. and Mrs. Khanna’s home, located at 51 Oak Drive, Barboursville, West Virginia (the “subject property”), was not constructed in a workmanlike manner, there were charges relating to labor hours and materials that were not performed on the subject property, material and labor costs were fraudulently increased, mold formed in a crawl space, there was interference in a business relationship, and the placement of a mechanics lien on the subject property by SWD is slanderous.

12. Specifically, the Complaint alleges that Mr. Wheeler and SWD failed to perform the construction contract in good faith by “price gouging; making negligent and fraudulent misrepresentations, and otherwise failing to perform the Contract in an ordinary and prudent manner in good faith and fair dealing.” Exhibit B, ¶ 37

13. Dr. and Mrs. Khanna also allege that Mr. Wheeler and SWD negligently breached their warranties that the subject property would be constructed in a workmanlike manner, be free from defects, and be suitable for habitability. Exhibit B, ¶¶ 41-50.

14. Dr. and Mrs. Khanna allege that they were fraudulently induced, and forced, into paying improper charges Mr. Wheeler and SWD represented were part of the costs of construction. Exhibit B, ¶¶ 51-63.

15. Further, Dr. and Mrs. Khanna allege that Mr. Wheeler and SWD tortiously interfered with a business relationship the Khannas held regarding the installation of a heating and air system on the subject property. Exhibit B, ¶¶ 64-68.

16. Finally, the Khannas allege that the Mechanic’s Lien Mr. Wheeler and SWD placed on the subject property is slanderous and made in an effort to extort money from Dr. and Mrs. Khanna. Exhibit B, ¶ 69-76 (incorrectly labeled 64-71).

17. Dr. and Mrs. Khanna seek compensatory and punitive damages for all damages and losses sustained, as well as their emotional distress, including pre- and post-judgment interest, costs, and attorney fees.

18. Pursuant to the terms and conditions of the Policy, State Auto has no duty to defend or indemnify SWD and Mr. Wheeler in the underlying matter inasmuch as the claims asserted by Dr. and Mrs. Khanna are not claims for “bodily injury” or “property damage” caused by an “occurrence” such that coverage is triggered.

19. Moreover, the claims asserted by Dr. and Mrs. Khanna are excluded by other Policy exclusions such as contractual liability and damages related to fungi or bacteria. Accordingly, State Auto has no duty to defend or indemnify Scott Wheeler and Scott Wheeler Development, LLC.

20. State Auto issued two reservation of rights letters to Mr. Wheeler and SWD on December 4, 2014 and November 28, 2017, respectively, reserving its right to deny coverage based on several provisions in the Policy. See Exhibits C and D, respectively.

21. Mr. Wheeler and SWD are being defended by State Auto subject to its reservation of rights.

22. A real and present controversy exists as to coverage under the Policy. A resolution of this issue is necessary to determine the rights and liabilities of the parties.

WHEREFORE, State Auto Property and Casualty Insurance Company respectfully requests that the Court determine that, pursuant to the clear and unambiguous language of the Policy, the Policy does not provide coverage to Defendants Scott Wheeler and Scott Wheeler Development, LLC for damages alleged by Dr. and Mrs. Khanna in the aforementioned Cabell County, West Virginia, civil action and State Auto has no duty to defend or indemnify Scott Wheeler or Scott Wheeler Development, LLC in that action, and grant such other and further relief as may be deemed just and proper.

**STATE AUTO PROPERTY AND
CASUALTY INSURANCE COMPANY
By Counsel**

Cipriani & Werner, P.C.

By: /s/ Robert A. Lockhart

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